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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

PIL LEE ORBISON,
Plaintiff and Appellant,

v.

CITY OF HERCULES et al.,
Defendants and Respondents.

A151912

(Contra Costa County
Super. Ct. No. MSC1600638)

Pil Lee Orbison appeals a vexatious litigant prefiling order. (Code Civ. Proc., § 391.7.)¹ Finding no error or abuse of discretion, we affirm the order.

I. STATUTORY BACKGROUND

The vexatious litigant statutes (§§ 391–391.8) are “designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants. [Citation.] . . . [¶] ‘Vexatious litigant’ is defined in section 391, subdivision (b) as a person who has, while acting in propria persona, initiated or prosecuted numerous meritless litigations, relitigated or attempted to relitigate matters previously determined against him or her, repeatedly pursued unmeritorious or frivolous tactics in litigation, or who has previously been declared a vexatious litigant in a related action.” (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169–1170 (*Shalant*)). One of the remedies provided by the statutory scheme “ ‘authorizes a court to enter a “prefiling

¹ All statutory references are to the Code of Civil Procedure.

order” that prohibits a vexatious litigant from filing any new litigation in propria persona without first obtaining permission from the presiding judge.’ ” (*Id.* at p. 1170; § 391.7.) “Litigation” is defined to mean “any civil action or proceeding, commenced, maintained or pending in any state or federal court.” (§ 391, subd. (a).)

II. PROCEDURAL BACKGROUND

Orbison brought this action against the City of Hercules (the City) and others in April 2016 alleging business torts and unfair business practices in connection with a tennis program she had developed for the City. The City and eight individual defendants demurred to the first amended complaint, and the trial court sustained their demurrer without leave to amend.²

In November 2016, defendants moved for an order declaring Orbison a vexatious litigant. The trial court granted the motion on January 19, 2017, concluding Orbison was a vexatious litigant and ordering, “Plaintiff will be prohibited from filing any new litigation in the courts of this state in propria persona without first obtaining leave from the presiding judge of the court where the proposed litigation is to be filed.” This order was served on Orbison on March 28, 2017. The trial court filed a Judicial Council form entitled “Prefiling Order—Vexatious Litigant” on April 5, 2017.

Pursuant to the prefiling order, Orbison applied to this court for permission to appeal several orders and judgments. We granted her application only as to the April 5, 2017 order.

III. DISCUSSION

“ ‘A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court’s ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment.’ [Citation.] Questions of statutory interpretation, however, we review de novo.” (*Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1498–1499 (*Holcomb*).)

² The trial court entered judgment in favor of those defendants on March 21, 2017.

The only issue before us is the propriety of the April 5, 2017 order. Defendants argue that this 2017 order is not a proper subject of appeal because it was merely “incidental” to the January 19, 2017 order granting their motion for an order declaring Orbison a vexatious litigant, and that an appeal from the January 19 order is untimely. (See *In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1347 [prefiling order is directly appealable].) They also argue the evidence supports the vexatious litigant order. Assuming the finding that Orbison is a vexatious litigant is properly before us on an appeal from the prefiling order, we conclude Orbison has not met her burden to show error. (See *Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1140 [appellant has burden to show error].)

A person may be declared a vexatious litigant if he or she, “[i]n the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.” (§ 391, subd. (b)(1); see *Stolz v. Bank of America* (1993) 15 Cal.App.4th 217, 224 [seven-year period begins running at time of filing of motion].) Litigation for purposes of this provision includes an appeal, even if the person was a defendant in the qualifying action. (*John v. Superior Court* (2016) 63 Cal.4th 91, 99.)

The trial court found Orbison fell within this provision. The record reflects five actions in propria persona decided against her in the seven years before defendants brought their vexatious litigant motion: *Orbison v. Harris*, Alameda County Case No. BG09484422 (request for dismissal filed February 11, 2010); *Orbison v. Osmundson*, Alameda County Case No. RB12622903 (petition for injunction denied November 16, 2012); *Orbison v. Magliaro*, Alameda County Case No. RG12623522 (petition for injunction denied November 16, 2012); *Olivarez v. Orbison*, First District Court of Appeal Case No. A143148 (dismissing as moot Orbison’s appeal from restraining order issued against her); and the instant case, in which the trial court sustained without leave to amend the demurrer of the City and eight individual defendants.

The trial court found Orbison also met two other independent criteria for vexatious litigants: she repeatedly relitigates or attempts to relitigate claims and issues against the same defendant or defendants (see § 391, subd. (b)(2)), and she “repeatedly files unmeritorious motions, pleadings, or other papers” (see § 391, subd. (b)(3)). Orbison makes no showing that these findings are unsupported by the evidence, and we must therefore presume they are correct. (See *Holcomb*, *supra*, 129 Cal.App.4th at pp. 1498–1499; *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.) “ ‘[O]ne good reason is sufficient to sustain the order from which the appeal was taken.’ ” (*People v. JTH Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1237.)³

IV. DISPOSITION

The April 5, 2017 order is affirmed.

³ On August 6, 2018, January 28, 2019, and February 4, 2019, Orbison submitted requests for “Judicial Review,” which we shall construe as requests for judicial notice. Good cause lacking, we deny the requests.

Tucher, J.

We concur:

Pollak, P.J.

Streeter, J.

